

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 12727, of BNA Washington, Inc., pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance to permit the filing for a Certificate of Occupancy for a use in existence on the effective date of the designation of the CR District (Sub-section 4502.5) at the premises 1221-1225, 1229, 1231 - 25th Street, N.W., (Square 24, Lots 43, 95, 837, 842 and 862).

HEARING DATE: September 18, 1978  
DECISION DATE: November 1, 1978

FINDINGS OF FACT:

1. The subject parking lot is located on the east side of 25th Street between M and N Streets, N.W., and is known as premises 1219 - 25th Street, N.W. It is in a CR District.
2. To the north, separated by a fifteen foot alley are two office buildings owned by the applicant. To the south, separated by a fifteen foot alley are lots used for parking by PMI and one single family dwelling. Further south along the 2400 block of M Street are a store, a private parking area, a garage type of structure and the M Street entrances to the PMI parking facility. To the east, separated by a thirty foot alley and fronting along 24th Street is a pharmaceutical supply facility and a B and W parking garage. To the west, on the opposite side of 25th Street, is the Francis Junior High playing field and at the northwest corner of the intersection of 25th and M Streets is a parking lot.
3. The applicant and its predecessor in title have continuously leased space for the operation of a parking lot on the subject premises since 1967. The use is recognized by surrounding property owners and longterm lessees as being in existence for an extended period of time.
4. Since the demolition of structures on the subject lots, the area has been surfaced with macadam, lined for parking spaces and used for parking purposes.

5. Parking Management, Inc. (PMI) was the lessee of the subject premises from 1967 to 1977. The subject premises was operated as a part of a larger lot to the south, premise address 2439 M Street, N.W. Initially, the former PMI lot encompassed record Lots 35, 98, 99, 830, 831 and 851 in Square 24, premise address 2439 M Street, N.W. Certificate of occupancy No. B48228 was issued on November 6, 1974 permitting a parking lot on Lots 39, 98, 99, 830, 831 and 851 in Square 24. The certificate of occupancy apparently issued erroneously includes Lot 39 and, through administrative error, excludes Lot 35. Lot 35 contains the only attendant's shed for the entire lot and a part of the curb cut for the M Street frontage of the parking lot.

6. An extension was made to this lot in certificate of occupancy No. B48227 which authorized Lots 40, 803, 845 and 852 for parking use. This certificate was dated December 3, 1964 and authorized for public lot use the premises having the address of 1219 - 25th Street, N.W. The subject lots, however, were not included in said certificate of occupancy.

7. PMI, as operator of the lot, failed to file for a subsequent certificate of occupancy for the subject site when the lots at issue were added in approximately 1967. In 1967 the subject site was zoned C-M and could have been used for parking purposes as a matter-of-right.

8. Prior to October of 1966, the premise address of the subject properties were 1221-31 - 25th Street, N.W. After this date, the site had addresses 1215-23 - 25th Street, N.W. In 1972, an enforcement letter dated March 17, 1972 from Mr. Carncross, Chief of the Zoning Inspection Branch was sent to Mr. Wacaster of PMI stating that premises 1219 - 25th Street, N.W. was being used for parking purposes without a valid certificate of occupancy. At that time the aforementioned certificate No. B48227 was exhibited as permitting such use and apparently accepted as such by the District with the matter being closed.

9. The total area of the contiguous site is 20,951 square feet. This total includes 2,582 square feet of land that is used for parking under a different certificate of occupancy not here at issue and 5,206 square feet which houses a vacant one-story brick warehouse. The subject parking lot is an integral part of the larger lot. It contains approximately 13,000 square feet and accommodates approximately 100 automobiles.

10. A commercial parking lot was permitted as a matter-of-right under the C-M-2 zoning classification which existed on the subject property from 1958 to December 29, 1974. On December 27, 1974, the subject property was rezoned to C-R, where a parking lot is prohibited.

11. There are immediate plans to develop the subject site. The applicant intends to construct an office facility on the site by approximately August of 1980 and the subject parking lot would be an interim use until construction commences.

12. Municipal Planning Office, by report dated August 18, 1978, recommended that the application be granted for a period of not to exceed two years as a reasonable interim use of the property. It noted that negotiations were presently underway to develop the site within an estimated period of two years and further recognized that denial of the application would remove the opportunity for a viable use during the interim period. MPO further noted that it is not anticipated that a limited approval of the application would cause substantial detriment to the public good or impair the intent and purposes of the CR District.

13. The West End Washington Circle Associates the Dupont Circle Citizens Association and an individual neighborhood property owner opposed the application on the grounds that the subject parking lot was operating without a certificate of occupancy and thus the use was an illegal use; that if the Board were to grant the variance it would be ratifying an illegal act; that under CR zoning new surface parking lots were absolutely prohibited and non-conforming parking lot uses would be continued only if they had a valid certificate of occupancy at the time the property was rezoned to C-R; there is no need for the subject parking lot since there are sufficient parking facilities in the neighborhood; that the present application constitutes a creation of a parking lot and that the hardship necessary to sustain the requested variance was a self-imposed hardship which is not a basis for a variance.

14. Advisory Neighborhood Commission 2A, opposed the application on the grounds that the subject parking lot is an illegal use of the property; that the proposed commuter parking lot is inconsistent with the goals and policies of the D.C. Department of Transportation since there is ample public bus transportation available within walking distance and that the ANC is opposed to a policy of tearing down residences and putting in interim parking lots.

15. In responding to the "issues and concerns" of the ANC to which the Board is required by statute to give great weight, and the common concerns of the aforementioned community organizations and citizens, the Board finds as follows: (a) It was common knowledge to all that the subject site since 1967 was being used as a parking lot in conjunction with the contiguous larger parking lot and its use was recognized and unchallenged until January 30, 1978, when the Office of the Zoning Administrator advised the manager of the lot that a certificate of occupancy did not exist for the subject lots, and the applicant took immediate steps to obtain a certificate of occupancy. (b) The present request for a variance does not constitute a request to establish a parking lot but rather a request to permit the filing for a certificate of occupancy for a use in existence on the effective date of the designation of the CR District. (c) The subject use existed as a matter-of-right under the prior C-M-2 zoning and under the present C-R Zoning the use could have continued provided the property had a valid certificate of occupancy at the time of the rezoning of the subject lot. (d) There is no evidence that the applicant acted in bad faith, but rather in ignorance, in failing to obtain a valid certificate of occupancy (e) There was a mutual mistake on behalf of the applicant and the District of Columbia Government as to the certificate of occupancy in effect at the time of the aforementioned zoning change. (f) The subject property has been vacant since the later 1960's. At that time, the C-M District which applied to the property did not permit new residential construction. (g) The Board is not required to find that there are other available parking spaces in the neighborhood or that the use is reasonably necessary or convenient to uses in the area, as it would if this were a special exception case in other Districts; and (h) The parking lot is an interim use that will be terminated by the Board as hereinafter ordered. As an interim use, the Board is furthering the policies of the DOT in phasing out parking lots. The Board is not permitting the creation of a new parking lot.

CONCLUSIONS OF LAW:

The Board concludes that the requested variance is a use variance the granting of which requires a showing of a hardship stemming from the property itself. Further, the applicant seeks the use as an interim use pending construction which is contemplated within two years.

The subject lots are surrounded by another parking lot, a parking garage, two office buildings and a playing field. The Board concludes that no other viable interim use could be made of the subject property and that denial of the application would deprive the owner of a reasonable use of the property for the interim period. The hardship is thus in the property itself.

The Board has addressed the issues and concerns of the ANC and parties in opposition. The Board further concludes that the relief can be granted as an interim use without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

- a. Approval shall be for a period of eighteen months.
- b. All areas devoted to driveways, access lanes, and parking areas shall be maintained with a paving of material forming an all-weather impervious surface.
- c. An eight inch coping shall be erected and maintained along each side of all driveways to protect the public space.
- d. Bumper stops shall be erected and maintained for the protection of all adjoining buildings.
- e. No vehicle or any part thereof shall be permitted to project over any lot or building line or on or over the public space.
- f. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Landscaping shall be maintained in a healthy growing condition and in a neat and orderly appearance.
- g. No other use shall be conducted from or upon the premises and no structure other than an attendant's shelter shall be erected or used upon the premises unless such use or structure is otherwise permitted in the zoning district in which the parking lot is located.
- h. Any lighting used to illuminate the parking lot or its accessory building shall be so arranged that all direct rays of such lighting are confined to the surface of the parking lot.

VOTE: 4-0 (Chloethiel Woodard Smith, John G. Parsons, Charles R. Norris, and William F. McIntosh to GRANT, Leonard L. McCants not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY: Steven E. Sher  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 26 JAN 1979

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.